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14   UNITED STATES DISTRICT COURT

15   NORTHERN DISTRICT OF CALIFORNIA

16   SAN JOSE DIVISION

17

18 GOOD TECHNOLOGY CORPORATION   Case No. CV-12-05826 PSG
   AND GOOD TECHNOLOGY SOFTWARE,
19 INC.,   **MOBILEIRON'S MOTION TO
                                        PRECLUDE GOOD TECHNOLOGY
20   Plaintiffs,   FROM RELYING ON MORE THAN 4
                                        PRIOR ART REFERENCES**
21   v.

22 MOBILEIRON, INC.,

23   Defendant.

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SILICON VALLEY

I.   INTRODUCTION

MobileIron moves to enforce the Court's order limiting Good to four prior art references at trial. After the Court's order, Good changed how it counts its references and now treats two prior art references—the Ondeego AppCentral product and the Nagpal patent application—as a single reference. But Good's expert Dr. Akl treats Ondeego AppCentral and Nagpal as separate references. And Dr. Akl identifies different functionality and presents different invalidity theories for each reference. Nothing in Dr. Akl's opinion specifically states (1) what portions of the Nagpal reference relates to Ondeego Appcentral or (2) what portions of Ondeego Appcentral relates to the Nagpal reference. Good's election of prior art is a transparent end-run around the Court's order.

II.   BACKGROUND

Good's expert, Dr. Akl, treats Ondeego AppCentral and Nagpal as distinct references. He discusses each reference in separate sections of his report. In total, Dr. Akl's report discussed ten prior art references: (1) Ondeego AppCentral, (2) GFE, (3) Lange, (4) Clare, (5) Maurya, (6) Mehta, (7) Kjellberg, (8) Bilange, (9) Krzyzanowski, and (10) Nagpal.[1] Dr. Akl confirmed this in his deposition:

Q. In your invalidity report, you analyze 10 different pieces of prior art, correct?

A. Yes, that is correct.[2]

Good dropped Bilange, bringing the total to nine. That was the situation leading into the morning conference with the Court on July 16, 2015.

At the July 16 conference, the Court ordered Good to reduce its number of prior art references to four.[3] Good sought to present five prior art references to the jury, but the Court rejected that proposal and, over objection from MobileIron's counsel, Good represented that it "can accept four."[4]

At the time Good was required to disclose its four selected references—at 7:00pm on July

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[1] Decl. of Lillian J. Mao, Ex. 1 (Akl Invalidity Report Table of Contents).
[2] *Id.*, Ex. 2 (Akl Dep.) at 49:17-19.
[3] *Id.*, Ex. 3 (Trial Tr.) at 10:24-25, 12:2-3.
[4] *Id.* at 8:16-22, 10:20-12:3.

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MOTION TO PRECLUDE GOOD FROM RELYING ON
MORE THAN 4 PRIOR ART REFERENCES
CV12-05826 PSG

1   17, 2015—Good identified the following:

2   Clare (including PX1285),
    GFE (including PX497- 499, 1757),

3   AppCentral (including PX495, 1008, 1290-1292, 1758-1759) and
    Mehta (including PX1286).[5]

4   MobileIron promptly identified two problems with Good's election. First, PX1008 was not

5   timely disclosed in Good's invalidity contentions. Second, Good treated AppCentral as including

6   PX1290 and PX1291, which are the Nagpal reference and provisional application that Dr. Akl

7   admitted was a different prior art reference. This disclosure was inconsistent with Dr. Akl's

8   unequivocal admission that he was treating AppCentral and Nagpal as separate references. The

9   parties could not reach agreement on this issue, forcing MobileIron to file this motion.

10 **III.   ARGUMENT**

11   Good's election of prior art is a transparent attempt to violate the Court order and assert

12 five references at trial instead of the Court-ordered four. As he admitted in his report and in

13 deposition, Dr. Akl does not consider Nagpal to be part of the Ondeego AppCentral prior art.

14 Good has never disclosed any theory of how the substance of Nagpal is describing Ondeego

15 AppCentral. Yet Good now seeks to improperly count Nagpal as part of the AppCentral

16 reference.

17   Good plainly understood this implication of the Court's order: When MobileIron made

18 the proposal of electing four prior art references, Good protested that MobileIron was "cut[ting]

19 Good's prior art by ***more than half***."[6] That is precisely what the Court adopted. Yet the status of

20 references is otherwise:

Still Asserted	Dropped
Clare	Lange
GFE	Maurya
AppCental	Kjellberg
Nagpal	Kryzanowski
Mehta	

IV.   CONCLUSION

    For the foregoing reasons, MobileIron respectfully requests that the Court require Good to

select one additional reference to drop from among Clare, GFE, AppCentral, Nagpal, and Mehta.

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[5] Mao Decl., Ex. 4.
[6] *Id.*, Ex. 5 (emphasis added).

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1   Dated: July 19, 2015

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MOTION TO PRECLUDE GOOD FROM RELYING ON
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